IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32(2) (b)
Description of Case

Govt. Appeal No. 61 of 2001
(Old No. 2578 of 1997)

Date of decision:- 04-5-2006

A.F.R. (Approved for Reporting)

Not approved for reporting

Date:- 04-5-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Government Appeal No. 61 of 2001
(Old No. 2578 of 1997)

State of Uttaranchal …applicant/appellant

Versus

Gajpal Singh
S/o Shri Narayan Singh
Village – Chopta, Patwari Circle-Nalgaon
Tehsil-Tharali,
District – Chamoli ….Respondent

Shri L.M. Verma, learned A.G.A. for the State
Shri R.P. Nautiyal, learned counsel for the respondent.

Hon'ble J.C.S. Rawat, J.

This special leave application has been filed by the state for seeking to quash the judgment and order of acquittal passed by the Judicial Magistrate, 1st Class Karnprayag, Chamoli dated 31.07.1997.

Brief facts of the prosecution case are that on 16.01.1992 at about 8:00 pm the complainant was in his house and there was a public path adjacent to the house of the complainant. The accused-respondent came near to the house of the complainant and started to abuse the complainant and his family member. The complainant and his family member protested to the accused. The accused thrown a stone on Raguhvir Singh and he sustained the injuries by the said stone. When the daughter of the complainant reached at the spot to save her father, the accused-respondent also thrown a bottle upon her which caused the injuries on the teeth of Jayanti Devi. Thereafter, he also thrown the bottle upon the son of the complainant, Yaswant Singh who also sustained the injuries on his hand. When hue and cry was made, Hari Singh, Harsh Prasad and other reached at the spot to save the complainant and his family member. The accused-respondent immediately fled away from the place of occurrence.

Thereafter, the matter was reported to the police and the F.I.R. was lodged. Thereafter, the matter was investigated and a chargesheet was submitted against the accused-respondent. The evidence was recorded by the learned Magistrate and after appreciation of the evidence, the learned Magistrate acquitted the accused-respondent of the charges leveled against him.

Feeling aggrieved by the said order, the State has preferred this appeal before this court.

It is well settled principle of law that if two views are possible, the view which has been taken by the trial court would prevail because the trial court had the opportunity to see the conduct and demeanors of the witnesses. The learned Magistrate has pointed out so many infirmities in the prosecution case on the basis of which the trial court had acquitted the accused-respondent. The first infirmity in the prosecution case was that the complainant had himself had taken a case that he sustained the injuries by the throwing the stone by the accused-respondent but PW1-Hari Singh who was said to be the eyewitness of the incident had not stated that the accused had thrown any stone upon the complainant. The learned Magistrate had also held that Raghuvir Singh was not medically examined though he himself brought Jayanti Devi and Yashwant Singh in hospital and he got conducted the medical of Jayanti Devi and Yashwant Singh in the hospital. But he himself did not offer for the medical examination to the doctors. This fact itself leads to take the inference that the prosecution story was doubtful. The second part which had been narrated by the prosecution in his evidence was that a bottle was thrown upon Jayanti Devi and his son. It was also observed by the trial court that Jayanti Devi as well as Raghuvir Singh himself had not stated this fact in their evidence. The learned A.G.A had not disputed this fact which has been narrated in the judgment. This fact also falsifies the prosecution story. The second infirmity which has been pointed by the trial Magistrate was that Smt. Jayanti Devi

herself has stated that he came from matrimonial house to the parental house in the afternoon on the date of the incident but it is not stated that the incident took place in the morning and the report was lodged at about 8:30 am. The learned Magistrate also held that the F.I.R. is anti-time. The third infirmity which has been pointed out by the trial Magistrate was that PW2- Jayanti Devi herself stated that spot her father, brother ands she was present and none was there at the spot. This statement further creates doubt about the presence of PW1-Hari Singh who was said to be the eyewitness of the incident. It is also pertinent to mention here that the prosecution had given the name of Harsh Prasad and Balam Singh to be the eyewitnesses of the incident with F.I.R. if the eyewitnesses who had been produced were not credible then it was obligatory on the part of the prosecution to adduce the evidence of Harsh Prasad and Balam Singh before the court below so that the evidence could be evaluated. Non-production of these witnesses also created doubt in the prosecution story. It is admitted to the parties that there were chain of litigation in between the parties. I am completely in agreement with the findings recorded by the trial court.

It is also pertinent to mention here that the record of the case was summoned from the trial court and it has been reported that the record has already been weeded out. Under these circumstance, the evaluation of the evidence independently is not possible.

In view of the foregoing discussion, I am of the view that this leave to appeal application is devoid of merit and is liable to be dismissed and the same is accordingly dismissed. The appeal is also stands dismissed.

(J.C.S. RAWAT, J.)

4th may, 2006
Shiv